IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 16862 of 2003

Between:

J.Subba Rao s/o Sri Surya Rao, C/o Kamanagaruvu Primary Agricultural Cooperative Society., Kamanagaruvu, Village & Mandal., East Godavari Dist.

.... PETITIONER

AND

1 The Government of A.P.,rep.by its District Cooperative Officer at Kakinada East Godavari District.
2 The District Cooperative Central Bank., East Godavari District at Kakinada East Godavari District rep.by its General Manager.
3 N.Kothapalli Primary Agricultural Cooperative Society., Uppalaguptam

Mandal., East Godavari District rep.by its President/ Chairman.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order direction or Writ particularly one in the nature of Writ of Mandamus or any other appropriate Writ (i) declaring the action of the respondents in not releasing the subsistence allowance due to the petitioner during the period of Suspension for the period from 18-5-1993 to 19-2-1995 as illegal and consequently direct the respondents 2 and 3 to pay the amount due in pursuance of the letter dated 26-9-2002 together with interest at 12% per annum till actual payment

Counsel for the Petitioner: MR.G.VIDYASAGAR

Counsel for the Respondents No.1: GP FOR COOPERATION

Counsel for the Respondent No.2: MR.C.V.MOHAN REDDY

Counsel for the Respondent No.3: MR.A.SATYA PRASAD

The Court made the following order:

ORDER:

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The petitioner was placed under suspension during the period from 18.05.1993 to 19.02.1995. It is the case of the petitioner that subsistence allowance was not paid for the said period. Hence, he filed the present writ petition to direct the respondents 2 and 3 to pay the subsistence allowance. Admittedly, the petitioner is an employee of the third respondent. Previously, he worked as a Secretary at N.Kothapalli Primary Agricultural Cooperative Society and later transferred to Kamanagaruvu PACS. The petitioner was placed under suspension while working under the services of the 3rd respondent and therefore, he is entitled for the subsistence allowance payable by the 3rd respondent society.

Previously, the petitioner filed WP No.26781 of 2000 for the payment of the subsistence allowance, which was disposed of by an order dated 14.02.2002 directing the second respondent to conduct an enquiry and fix up the responsibility as to which society has to pay the subsistence allowance in accordance with the rules. For non-implementation of the said order, the petitioner filed CC.No.261 of 2003, which was closed, as the respondents fixed up subsistence allowance to be paid by the 3rd respondent.

The 3rd respondent filed a counter affidavit stating that they have already passed a resolution agreeing to pay the subsistence allowance of Rs.56,605/- for the aforesaid period, but the petitioner himself disputed the said claim by not accepting the same on the ground that he is entitled for the subsistence allowance at the rate of Rs.90,082/-. There cannot be any dispute with regard to the entitlement of subsistence allowance in respect of the salaries fixed in accordance with Section 116-C of the Andhra Pradesh Cooperative Societies Act.

Learned counsel appearing for the 3rd respondent cooperative society submits that in view of the judgment dated 30.08.2004 in WPNo.3171 of 2003 and batch rendered by this Court the petitioner is entitled to the subsistence allowance in respect of the salary fixed as per Section 116-C of the Act and the petitioner is not entitled to draw either salary or subsistence allowance contrary to the provisions of Section 116-C of the Act which is mandatory in nature.

Having regard to the facts and circumstances of the case, the writ petition is disposed of directing the 3rd respondent to pay the subsistence allowance payable to the petitioner after fixing the salary in accordance with the provisions of Section 116-C of the Act at the relevant point of time and pay the same to the petitioner.

Accordingly, the writ petition is disposed of. No costs.

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(V. ESWARAIAH, J)

September 7, 2003

Dsk/Kvrm

To

1 The Government of A.P.,rep.by its District Cooperative Officer at Kakinada

East Godavari District.

2 The District Cooperative Central Bank., East Godavari District at Kakinada East Godavari District rep.by its General Manager.

3 The President/Chairman, N.Kothapalli PACS, Uppalaguptnam Mandal, East

Godavari District.

3 Two CCs to GP For Cooperation, High Court Buildings, Hyderabad (OUT).

4 Two CD Copies.